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July 16, 2002

**BY HAND DELIVERY**

Ms. Blanca Bayó, Director  
The Commission Clerk and Administrative Services  
Room 110, Easley Building  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

Dear Ms. Bayó:

Enclosed for filing on behalf of AT&T Communications of the Southern States, LLC are an original and fifteen copies of AT&T's Petition Requesting Suspension of and Cancellation of Switched Access Contract Tariff No. FL2002-02 Filed by BellSouth Telecommunications, Inc.

Please acknowledge receipt of this letter by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely yours,



Floyd R. Self

FRS/amb

Enclosures

cc: Virginia Tate, Esq.  
Parties of Record

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition of AT&T Communications )  
of the Southern States, LLC for suspension )  
and cancellation of Switched Access )  
Contract Tariff No. FL2002-02 filed by )  
BellSouth Telecommunications, Inc. )  
\_\_\_\_\_ )

Docket No. :  
Filed: July 16, 2002

**PETITION OF AT&T COMMUNICATIONS  
OF THE SOUTHERN STATES, LLC  
REQUESTING SUSPENSION OF AND CANCELLATION  
OF SWITCHED ACCESS CONTRACT TARIFF NO. FL2002-02  
FILED BY BELL SOUTH TELECOMMUNICATIONS INC.**

COMES NOW, AT&T Communications of the Southern States, LLC (AT&T), and hereby files this Petition requesting the suspension and cancellation of BellSouth Telecommunications, Inc.'s (BellSouth's) Switched Access Contract Tariff No. FL2002-01 by the Florida Public Service Commission for violations of the Telecommunications Act of 1996, rules of the Federal Communications Commission (FCC) and Chapter 364, Florida Statutes. In support of this petition AT&T states:

1. The name and address of the Petitioner is:

AT&T Communications of the Southern States, LLC  
1200 Peachtree Street  
Suite 8100  
Atlanta, Georgia 30309

2. All pleadings, documents, correspondence, notices, staff recommendations and orders filed, served or issued in this docket should be served on the following on behalf of Petitioners:

Tracy Hatch, Esq.  
Floyd R. Self, Esq.  
Messer, Caparello and Self, P.A.  
P. O. Box 1876  
Tallahassee, FL 32302

(850) 222-0720

Virginia Tate, Esq  
AT&T Communications of the Southern States, LLC  
Suite 8100  
1200 Peachtree Street, N E.  
Atlanta, GA 30309

3. This petition is filed pursuant to Chapters 120 and 364, Florida Statutes, the Telecommunications Act of 1996, and Rule 28-106.201, Florida Administrative Code

4 Petitioner is certificated by the Florida Public Service Commission in Florida as an Interexchange Carrier (IXC) and an Alternative Local Exchange Telecommunications Company (ALEC)

5 Currently, BellSouth's Intrastate Access Services Tariff is the only tariff available to IXCs under which they may purchase "switched access services" from BellSouth "Switched access charges" are the charges paid by IXCs to compensate BellSouth for originating and terminating long distance calls<sup>1</sup> Such charges constitute a significant proportion of the total cost of a long distance call and, therefore, have a significant influence on long distance rates

6. On June 3, 2002, BellSouth filed revisions to its Florida Access Services Tariff to add Section E26, Switched Access Contract Tariff No FL2002-01 ("Revised Tariff") The Revised Tariff carries an effective date of June 17, 2002. A copy of the Revised Tariff is attached hereto as Exhibit 1

7 The Revised Tariff seeks to fundamentally change the switched access landscape in Florida, conveniently at a time when BellSouth soon hopes to enter the interLATA long distance

market in Florida through its affiliate BellSouth Long Distance, Inc. (BSLD)

8        Until the filing of this Revised Tariff, BellSouth has always charged all long distance carriers the same access charges. Now, BellSouth has proposed -- for the first time -- to charge some long distance carriers more than others for originating and terminating calls. Specifically, the Revised Tariff will allow BellSouth to enter into a special contract with an as yet unnamed long distance carrier with whom BellSouth has apparently been in negotiations. Under that contract, BellSouth will reduce access rates for that unnamed carrier by up to 35% while, at the same time, continuing to charge the regular tariffed rates to all other long distance carriers, including those which have the same amount of usage as the unnamed contract carrier.

9.        This is the first time BellSouth has offered a customer specific contract service arrangements for switched access services. BellSouth's Revised Tariff is discriminatory on its face. It applies, for example, to a long distance carrier which has, during the first year of the contract, total minutes of not less than "1,054,830,619" and not more than "1,371,279,805" minutes.<sup>2</sup> For reasons not explained, the discounts "are not applicable to any usage levels outside" of that very narrow range. See Section E26 1 5 of the Revised Tariff. Furthermore, the contract is written so that the discounts apply only if the carrier's minutes of use are steadily increasing. A carrier which has the same total number of minutes as the "contract" carrier but does not have annual growth could not

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1        When a customer dials a long distance call, the customer's local telephone company first delivers the call to the customer's long distance carrier. The long distance carrier pays "originating" access charges to the local carrier for delivering the call. Similarly, at the other end of the call, the long distance carrier pays "terminating" access charges to compensate the receiving party's local carrier for delivering the call to its final destination.

2        The specificity of these numbers clearly indicates that the tariff is designed for one, particular long distance carrier and is not intended for use by other carriers.

take advantage of these discounts *Id.*<sup>3</sup> Florida law does not allow for the type of special contract BellSouth has proposed in the Revised Tariff.

10 In particular, the discounts are designed to provide reduced access charges for specified levels of growth in switched access usage. This is a *growth* tariff which provides

- a To qualify for discounts, the IXC in Year 1 must exceed the minimum usage specified, in Year 2, it must exceed 102% of the minimum usage, and by Year 4, it must exceed 110% of the minimum usage.
- b BellSouth applies a discount to the revenue associated with minutes that exceed the minimum usage (*i.e.*, growth or incremental volumes up to 30% of the minimum usage) during the relevant year.

11 Because the Revised Tariff provides discounts based only on "positive incremental" or growth of local switching minutes of use (MOU's), the Revised Tariff only benefits those IXCs, like BSLD, that will experience a growth in MOU volumes. An IXC, like AT&T, whose intrastate volume historically has been declining is discriminated against by the methodology of the Revised Tariff. Under this growth tariff, IXCs with *identical* traffic volumes will be paying disparate per-minute rates for switched access because the IXC with increasing switched access MOU volumes will be able to take advantage of the growth discount plan whereas customers in a "no growth" or "declining trend" mode cannot obtain the discount. Consequently, the effective per-minute switched access rate for customers with growth will be lower than the rate for customers with the same amount of traffic that do not exhibit growth.

12. BellSouth's discount growth rate in the Revised Tariff is blatantly anticompetitive and unreasonably discriminatory in its design and in its ultimate effect in violation of Sections

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3 In other words, the proposed tariff is not a "volume discount," as it is described in BellSouth's "Executive Summary," but a "growth" discount. Such growth discounts have been explicitly rejected by the FCC *LEC Pricing Flexibility Order* (FCC 99-206, 14 FCC Rcd 14,221, ¶¶ 134-135 (1999)).

364 051(5), 364.08, 364 09, 364 10 and 364 3381, Florida Statutes, as well as Section 251(g) of the Telecommunications Act of 1996

13 With the prospect of this level of growth for BellSouth's long distance service, the effect and the timing of BellSouth's Revised Tariff is more than simply coincidental with its efforts to enter the full long distance market place. The only carrier that appears remotely likely to have sufficient initial switched access minutes-of-use (MOU) volumes to benefit from the tariff and that has the prospect of sufficient growth in MOUs to benefit is BellSouth. Not only will BellSouth take a substantial market share from the IXC's upon clearing the 271 bar, it will give itself a discount on its switched access charges in the process. Nothing could be more anticompetitive and discriminatory against the other IXC's and ALEC's that compete in the long distance market.

14. BellSouth has filed its Switched Access Contract Tariff in other states in its serving area. In Georgia, AT&T filed an intervention and explained the anticompetitive nature of the Tariff. Subsequently, on July 8, 2002, BellSouth filed a letter requesting that the Georgia Public Service Commission delay the effective date of the tariff due to questions raised by Commission staff. In North Carolina, the Utilities Commission issued an Order on June 25, 2002 suspending the tariff and requested that the parties negotiate to resolve the matter.

15 Petitioner anticipates that disputed issues of material fact will include, but not be limited to, BellSouth's disagreement with some or all of Petitioners' contentions set forth in this Petition.

16 Pursuant to Chapters 120 and 364, Florida Statutes, and applicable Commission rules and orders, the Commission should immediately suspend BellSouth's Switched Access Contract Tariff No. FL2002-01, schedule a formal administrative hearing to consider and resolve disputed

issues of fact and law concerning the effects and impacts of the Revised Tariff, and enter a final order denying and canceling the Revised Tariff

WHEREFORE, Petitioner respectfully requests that the Commission

A. Suspend the effectiveness of BellSouth's Switched Access Contract Tariff No FL2002-01,

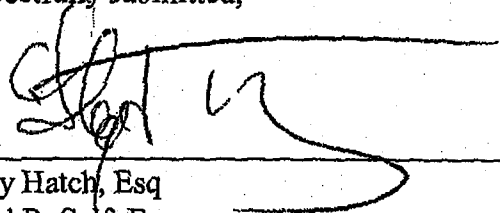
B. Schedule and conduct a formal administrative hearing to address disputed issues of fact and law regarding the Revised Tariff pursuant to Sections 120.569 and 120 57(1), Florida Statutes,

C. Enter a final order denying and canceling the Revised Tariff; and

D. Grant such further relief as the Commission deems just and proper.

Respectfully submitted this 16<sup>th</sup> day of July, 2002

Respectfully submitted,



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P O Box 1876  
Tallahassee, FL 32302  
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and

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